IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1655 OF 2003

1. Life Insurance Corporation of India, a statutory corporation incorporated under the provisions of the Life Insurance Corporation Act, 1956 and having its registered office and Western Zonal office at Yogekshema, Jeevan Bima Marg, Mumbai 400 021.

2. The Senior Divisional Manager, Life Insurance Corporation of' India, Thane Divisional office, at "Jeevan Cghintamani", Eastern Express Highway, Thane 400 604 .. Petitioners.

Versus.

1. S.G.Solanki, Indian Inhabitant represented by Western Zone Insurance Employees Association, 19A, Laxmi Niwas, Manmala Tank Road Mumbai 400 016.

2. The Presiding Officer, CGIT-I having its office at Shram Raksha Bhavan, Shivsrushti Road, Eastern Express Highway, Sion, Mumbai. .. Respondents.

Ms. S.Paranjape i/b M/s.Little & Co. for the petitioners.

Shri Saikumar Ramamurthy for the respondent No.1.

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CORAM: ABHAY S. OKA, J

DATED: 14TH JULY, 2006.

ORAL JUDGMENT :

1. On the last Friday, I have heard the submissions made by learned counsel appearing for the parties.

2. By this petition under Article 226 of the Constitution of India, the first petitioner - the Life Insurance Corporation of India has taken exception to the judgment and award dated 2nd August, 2002 passed by the learned Presiding Officer of the Central Government Industrial Tribunal - I. By the impugned judgment and award, the learned Presiding Officer has held that the petitioners have acted illegally in discontinuing the services of Mrs.S.G.Solanki, the first respondent with effect from 5th July, 1994. It was held that she was retrenched and therefore the petitioner should reinstate her as a part time Sweeper. Necessary orders were passed for payment of back wages on the footing that the first respondent had worked for two hours every day from 6th July, 1988 to 4th July, 1994.

3. With a view to appreciate the submissions made

by learned counsel appearing for the parties, it will be necessary to refer to the facts of the case. According to the case of the first respondent, she was employed by the first petitioner as a part time sweeper on or about 7th July, 1988 and she continuously worked as such upto 4th July, 1994. According to her, the petitioners terminated her services abruptly with effect from 5th July, 1994 without notice or payment of retrenchment compensation. It is the contention of the first respondent that she was paid wages for 1/2 hour contrary to the award dated 17th April, 1986 made by Justice R.D.Tulpule. The first Respondent's case is that she was entitled to regularisation in the employment. On the basis of the demand made, a reference was made to the Central Government Industrial Tribunal No.1, Mumbai, which reads thus:

> "Whether the action of the management of Life Insurance Corporation of India in discontinuing the service of Mrs.S.G.Solanki w.e.f. 05.07.1994 is legal and justified ? If not, to what relief the said workman is entitled ?

4. The petitioners filed written statement and

contested the case. It is the case of the petitioners that one V.S.Dalvi was appointed as a part time sweeper for two hours a day. Due to shortage of water, his services were deployed for fetching water and he was paid an extra sum as if he was working for 1 and 1/2 hours more. Therefore, one more person by name M.B.Ruvekar was appointed as sweeper on temporary basis till a regular part time worker was appointed. He was paid wages for 2 hours daily on account of award given by Justice Tulpule on 17th April, 1986. According to the case of the petitioners, as per the desire expressed by the said M.B.Ruvekar, he was relieved of his duties with effect from 6th July, 1988 and the first respondent who is his daughter was appointed. According to the petitioners, she was also paid wages for 2 hours work in a day following the award. It was submitted that her appointment was purely stop gap as the intention was to fill the post through employment exchange. It is contended that the first respondent did not possess minimum qualifications prescribed for the post. It was contended that as the office of the first petitioner was shifted to new premises, employment of the first respondent was no longer required and accordingly her services were terminated.

5. The learned Presiding Officer of the Tribunal proceeded on the footing that the first respondent worked as a part time sweeper from 5th July, 1988 to 4th July, 1994. The learned Preisidng Officer observed that as the said fact was not in dispute, it was not necessary to go into the question whether the appointment of the first respondent was an ad-hoc appointment pending regular appointment. The Presiding Officer came to the conclusion that the only question involved was whether a workman could be retrenched without notice and without payment of compensation in violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act of 1947"). The learned Presiding Officer has held that the Tribunal was not required to look into the manner of her appointment. The Presiding Officer therefore proceeded to pass the order of reinstatement.

6. Learned counsel appearing for the petitioners has made extensive submissions. Learned counsel relied upon a decision of the learned Single Judge of this Court in the case of **Life Insurance Corporation of India v. Ravindra Vyankat Ladhe & Ors.** delivered on 13th April, 2005 by the learned Single Judge in Writ Petition No.1655 of 2002. Learned counsel for

the petitioners submitted the (Staff) Regulations, 1960 (hereinafter referred to as "the Regulations of 1960) framed by the first petitioner in exercise of powers vested in it under clauses (b) and (bb) of sub-section (2) of Section 49 of the Life Insurance Corporation Act, 1956 (hereinafter referred to as "the said Act of 1956) will have overriding effect over the provisions of the said Act of 1947. She relied upon the Regulation 8 of the said Regulations of 1960 and submitted that power to dispense with employment of a temporary workman was implicit in Regulation 8 of the said Regulations of 1960. She submitted that in view of the clear legal position which is evident from the aforesaid decision in the case of Life Insurance Corporation case (supra) the impugned award is unsustainable and deserves to be set aside.

7. Shri Ramamurthy, learned counsel appearing for the first respondent invited my attention to the written statement of the first petitioner. He also invited my attention to the affidavit of one R.Shrinivasan filed on behalf of the first respondent. He stated that the stand taken on oath is that the said Regulations of 1960 apply only to full time salaried employees of the first petitioner and have no

application to the part time employees. He submitted that in view of the said stand taken on oath by the first petitioner, now is not open for the petitioners to contend that the appointment of the first respondent will be governed by the said Regulations of 1960. He submitted that infact a statement on oath was made that the Central Government has not framed any rules under Section 48 of the said Act of 1956. he submitted that admittedly the first respondent was employed as a part time sweeper and therefore in view of the Regulation 2 of the Regulations of 1960, the said regulations will have no application. He submitted that the decision relied upon by learned counsel for the petitioners will have no application to the facts of the case. He submitted that now the petitioners are trying to take up the stand which is completely contrary to the stand taken before the Tribunal. He submitted that it is obvious that the said Regulations of 1960 will not have any application to the service conditions of a part time employee of the first petitioner. He also relied upon certain averments made by the petitioners in the written statement. He submitted that the learned Presiding Officer of the Tribunal was therefore right in holding that the first respondent was entitled to order of reinstatement with backwages. He invited my attention

to the various findings recorded by the Presiding Officer of the Tribunal. He urged that the Tribunal was required to see whether the first respondent was covered by Section 2(oo) of the said Act of 1947 and whether the services of the first respondent were terminated without payment of retrenchment compensation. He, therefore, submitted that it was not at all necessary to go into the question of method of appointment of the first respondent when the fact that she was appointed as a part time sweeper was admitted by the petitioners.

8. I have carefully considered the submissions made by learned counsel appearing for the parties. It will be necessary to refer to the stand taken by the first petitioner in the written statement before the Tribunal. A specific stand has been taken that the Regulations of 1960 will have overriding effect over the provisions of the said Act of 1947. it is contended that the first respondent was employed purely on a temporary basis to clean the toilets in the office premises until a regular sweeper was appointed on part time basis. It is submitted that as per the directions in the award dated 17th April, 1986 the first respondent was paid wages equivalent to wages of part time sweeper of 2 hours a day. In

paragraph 13 of the written statement, it is specifically stated by the first petitioner that:

> The appointment and terms and conditions of services of the temporary and part-time employees are regulated by administrative instructions issued by the Chairman in terms of Regulation 8, read with Regulation 4 of the Staff Regulations. Specifically it is denied that the appointing authority to the post of sweepers has got the power of framing the terms and conditions of service of employees of the said category. By way of clarification it is submitted that while in respect of the whole-time salaried employees it is the Central Government which in exercise of the power vested in its under section 48 of the LIC Act which can frame their terms and conditions of service, in so far as the temporary and part time employees are concerned it is the Chairman of the Corporation who, in exercise of the power vested in him by Regulation 8 read with Regulation 4 of the Staff Regulations, can lay down the terms and conditions of their services."

Thus, it has been contended that the Chairman of the first petitioner has exercised powers under Regulation 4 of the said Regulations of 1960 read with the Regulation 8 and the appointment of part time employees will be regulated by the instructions issued by the Chairman in exercise of powers under Regulation 4 read with Regulation 8 of the said Regulations of 1960. It is true that in the affidavit of R. Shrinivasan filed on behalf of the first Petitioner, a stand has been taken that Regulations of 1960 apply only to full time salaried employees of the Corporation and will have no application to part time employees. However, it is also stated that in the affidavit that Regulation 4 of the Regulations of 1960 empowers the Chairman of the first petitioner to issue instructions and directions as regards terms and conditions of the services of part time employees engaged by the first petitioner and the employment of part time employees is governed solely by the instructions issued by the Chairman in exercise of the said powers.

9. It will be necessary to refer to the relevant Regulations of the said Regulations of 1960. Regulation No.2 reads thus:-

"Application :

They shall apply to every whole-time (salaried) employee of the Corporation (in India) unless otherwise provided by the terms of any contract, agreement or letter of appointment.

Explanations: "Employee" excludes insurance agents and work-charged employees whose salaries are charged to particular property/properties or work/works. In the case of a female employee "he" and "his" are to be read as "she" and "her".

Regulations 4 and 8 read thus:-

Power to implement Regulations:

4. The Chairman may, from time to time, issue such instructions or directions as may be necessary to give effect to, and carry out, the provisions of these regulations and in order to secure effective control over the staff employed in the Corporation.

Temporary staff:

8. (1) Notwithstanding anything contained in

these Regulations, a Managing Director, Executive Director (Personnel), a Zonal Manager or a Divisional Manager may employ staff in Class III and IV on a temporary basis subject to such general or special directions as may be issued by the Chairman from time to time.

. (2) No person appointed under sub-regulation (1) shall only by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post."

10. The Chairman of the first petitioner has issued instructions and/or directions in exercise of powers conferred by the Regulation No.4. Thus, appointment of the first respondent on a part time basis has been made on the basis of the directions issued in exercise of powers conferred by the Regulations. Regulation 8 applies to all categories of staff employed on temporary basis in class II and class IV subject to general or special direction, as may be issued by the Chairman from time to time. Clause (2) of Regulation 8 provides that no person appointed under sub-regulation (1) shall only by reason of such appointment be entitled to absorption

in the service of the Corporation or claim preference for recruitment to any post. As pointed out earlier, the appointment of part time staff on temporary basis has been made in exercise of powers under Regulation 4 by the Chairman of the first petitioner Corporation. Regulation 8 on its plain reading applies to all categories of the staff members who are employed on temporary basis. Thus, it is obvious that the employment of staff members who are appointed temporarily on part time basis will be governed by the Regulation No.8. It is true that a stand has been taken on oath by the concerned officer of the first petitioner that the regulations will not apply to the employment of the first respondent. However, the applicability of the regulations which are held to be having overriding effect over the provisions of the said Act of 1947 will have to be decided not on the basis of the concession made by the parties but on interpretation of the regulations. Thus, no importance can be attached to the statement made by Shri R.Shrinivasan in his affidavit.

11. The learned Presiding Officer of the Tribunal has observed in the judgment that there is a violation of Section 25F of the said Act of 1947 and therefore, the first respondent is entitled to be reinstated. In

that behalf, it would be necessary to refer to a decision of the learned Single Judge in the case of **Life Insurance Corporation of India's case (supra)**. In paragraph 7 of the said decision, the learned Single Judge has adverted to the Regulations of 1960. The learned Single Judge has thereafter referred to the provisions of the Life Insurance Corporation Act (hereinafter referred to as "the said Act of 1956") as amended by Amending Act I of 1981 by which clause (cc) was inserted in sub-section (2) of Section 48 which confers the power upon the Central Government to make rules to carry out provisions of the said Act. The learned Single Judge held that as a result of sub-sections (2A), (2B) and (2C) which were introduced, the Regulations of 1960 are deemed to be the rules made under clause (cc) of sub-section (2) of Section 48. The learned Single Judge has thereafter referred to the provisions of sub-section (2C) of Section 48 of the said Act and held that the effect of sub-section (2C) is to impart overriding effect to any rules which have been made under clause (cc) nothwithstanding anything contained in the said Act of 1947. The conclusion drawn by the learned Single Judge is that said Regulations of 1960 are rules within the meaning of Section 48(2)(cc) of the said Act of 1956. Therefore, the learned Single Judge held

that Regulation 8 of the Regulations of 1960 will have overriding effect over the provisions of the said Act of 1947. Relying upon the decision of the Apex Court in the case of **M. Venugopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam,** reported in (1994) 2 SCC 323, the learned Single Judge held that the persons who are appointed under the said Regulations of 1960 will not get benefit of Section 25F of the said Act of 1947 as the regulations have overriding effect over the provisions of the said Act of 1947. The learned Single Judge held that the protection of Section 25F and other provisions of the said Act of 1947 was plainly unavailable, once the provisions of the said Act of 1947 are overridden.

12. As this is the law laid down on the subject and as it is found that the employment of the first respondent will be governed by the said Regulations of 1960, the impugned award passed by the learned Presiding Officer of the Tribunal will have to be quashed and set aside. Hence, I pass the following order.

ORDER

(i) The judgment and award dated 2nd August, 2002

passed by the learned Presiding Officer of the Central Government Industrial Tribunal-I, Mumbai, is hereby quashed and set aside. The Reference No.CGIT-47 of 1997 stands dismissed. Rule is made absolute accordingly.

(ii) There shall be no order as to costs.

Judge